

**\*\*AT&T Wireless Tulsa license subject to divestiture. See Cingular/AT&T Wireless Order ¶ 254.**

currently providing service (in all or part of licensed area)

EMBED Word.Picture.8 not currently providing service

These tables show the licensees and their operational status in markets being transferred from NextWave to Verizon Wireless. Licensees were identified using the FCC's Universal Licensing System. Determination of service was based principally on searches of service plan availability by city or zip code, as well as coverage maps on individual carriers' web sites (URLs identified below). Where licensees are partnered or affiliated with a national carrier, such as Cingular, the national provider's service was attributed to the licensee.

Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) (used for assigning Cellular A & B licenses) do not coincide exactly with BTAs, therefore, the counties within each BTA were aggregated to show the cellular licensees that serve a specific geographic region of the BTA.

**Sources:**

FCC, Universal Licensing System, <http://wireless.fcc.gov/uls>.

Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent To Transfer Control of Licenses and Authorizations, File Nos. 0001656065, et al., Memorandum Opinion and Order, WT Docket Nos. 04-70, et al., FCC 04-255 (rel. Oct. 26, 2004) ("Cingular/AT&T Wireless Order").

Airadigm (d/b/a Einstein PCS). Einstein PCS Find a Store. <http://www.airadigm.com/airadigm/find+a+store/default.asp>.

**ALLTEL.** ALLTEL, Plans, <http://www.alltel.com/estore/wireless/plans/>.

Auction 58. FCC Public Notice, Broadband PCS Spectrum Auction Scheduled for January 12, 2005, DA 04-3005, Attachment A (Sept. 16, 2004).

Cingular. Cingular, Zip Code/Location, [http://www.cingular.com/refresh/common/estore\\_zipcode?selinfo=Phones&from=estore](http://www.cingular.com/refresh/common/estore_zipcode?selinfo=Phones&from=estore); AT&T Wireless, How Can We Help You?, [http://www.attwireless.com/cell-phone-service/checkout/shopping\\_options.html](http://www.attwireless.com/cell-phone-service/checkout/shopping_options.html).

**Cricket. Cricket, Start Here, <https://www.mycricket.com/Default.aspx>.**

**Dobson (d/b/a Cellular One). Cellular One. Plans & Features: Plans & Coverage.** <https://www.celloneusa.com/ECell/displayPlans.do>.

NE Colorado Cellular (d/b/a Cell One of Northeast Colorado d/b/a Viaero Wireless). Viaero Wireless, Coverage Maps, <http://www.viaero.com/CoverageMaps/Index.cfm>; Telephone Call with Viaero Wireless Customer Service Representative (July 15, 2004).

**Nextel.** Nextel, Enter Zip Code, <http://nextelonline.nextel.com/NASApp/onlinestore/Action/DefineRegionAction>.

Qwest. Qwest, Wireless Coverage, <https://www.qwestwireless.com/products/coverage/myCoverage.jsp>.

Rural Cellular (d/b/a Unicel). Unicel, <http://www.unicel.com>.

San Isabel Cellular. San Isabel Telecom, Wireless Coverage Map: Crested Butte/Gunnison, <http://www.sanisabel.com/crestedmap.jpg>.

South Canaan Cell. Comm. Co. (d/b/a Cellular One of Northeast Pennsylvania). Cellular One of Northeast Pennsylvania, CellularOne Pricing: Coverage Map, <http://www.cellularonenepa.com/p/coverage.html>.

Sprint PCS. Sprint PCS, Your Coverage Information, <http://www.sprintpcs.com>.

Sussex Cellular (d/b/a SciTel Wireless). SciTel Wireless, Home Calling Area, <http://www.scitelwireless.com/getintheloop/coveragearea.pdf>.

Thumb Cellular. Thumb Cellular, Locations, <http://www.thumbcellular.com/locations.htm>.

T-Mobile. T-Mobile Sources: T-Mobile, What's Available in My Area, <http://www.t-mobile.com/locator.asp>.

Triton PCS (d/b/a SunCom). SunCom, Please Enter Your ZIP Code, <http://www.suncom.com/store/GetZip.jsp?type=plans&ts=1099421524212>.

Union Telco. Union Cellular, Coverage Areas, <http://www.union-tel.com/cellular/index.htm#>.

US Cellular. US Cellular, Enter a Location, [http://www.uscc.com/uscellular/SilverStream/Pages/r\\_zip.html?call=2](http://www.uscc.com/uscellular/SilverStream/Pages/r_zip.html?call=2).

Verizon Wireless. Verizon Wireless, Change Your Zip Code, <http://www.verizonwireless.com/b2c/vzwfly/go=/index.jsp?action=change>.

Western Wireless (d/b/a CellularOne). CellularOne, Pick Your Plan, <http://www.cellularonewest.com/rateplans.asp>.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re Chapter 11  
:  
NEXTWAVE PERSONAL Case No. 98 B 21529 (ASH)  
COMMUNICATIONS INC., et al., :  
Debtors. :  
-----X

**ORDER GRANTING MOTION PURSUANT TO SECTIONS 105 AND 363  
OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 2002 APPROVING ACQUISITION  
AGREEMENT AND TERMINATION PAYMENT**

Upon the Motion Pursuant to Sections 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2002 Approving Acquisition Agreement (the "Motion") filed by NextWave Personal Communications Inc., *et al.*, the above-captioned debtors and debtors in possession (collectively, "NextWave" or the "Debtors"); and upon the hearing on the Motion held on November 30, 2004 (the "Hearing") and the representations of counsel and evidence submitted thereat; and good and sufficient notice of the Motion and the Hearing having been given, and no other or further notice being required; and upon the complete record of these Chapter 11 cases and after due deliberation and good cause appearing therefor, the Court hereby

**FINDS, DETERMINES AND CONCLUDES THAT:<sup>1</sup>**

1. This Court has jurisdiction to hear and determine the Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C.

<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Acquisition Agreement attached hereto as Exhibit 1 or as defined in the Motion.

§ 157(b)(2)(A). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for relief requested in the Motion are Sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. As evidenced by the affidavits of service filed with this Court, and based on the representations of counsel at the Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Hearing, the Acquisition Agreement and the transactions contemplated thereby, has been provided in accordance with Sections 102(1), 105, 363 and 503(b) of the Bankruptcy Code, Bankruptcy Rule 2002, and all other provisions of the Bankruptcy Rule and/or the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”) governing the transactions that are the subject of the Motion; (ii) such notice was good, sufficient and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Hearing or the Acquisition Agreement or the transactions contemplated thereby is or shall be required.

4. A reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein has been afforded to all parties in interest, including the following: (i) the Office of the United States Trustee; (ii) the Committee; (iii) all entities (as used throughout this Order, such term shall have the meaning set forth in Section 101(15) of the Bankruptcy Code) known by

the Debtors to have asserted a lien on any of the Debtors' other assets; (iv) all of the Debtors' creditors, equity and other interest holders of record; (v) the taxing authorities for those jurisdictions in which the Debtors have conducted business; (vi) all non-debtor parties to any executory contracts or unexpired leases of the Debtors; (vii) all other parties that had filed a notice of appearance and demand for service of papers in the Bankruptcy Cases under Bankruptcy Rule 2002 as of the date of the Motion; and (viii) parties in interest by publication of notice as set forth in the certificates of service filed in connection with the Motion.

5. Each of the Debtors has full corporate power and authority to execute the Acquisition Agreement and all other documents contemplated thereby. Subject to the conditions in the Acquisition Agreement, each of the Debtors has all of the corporate power and authority necessary to consummate the transactions contemplated by the Acquisition Agreement and no consents or approvals, other than approval of this Court through this Order, FCC Approval, HSR Approval and those approvals expressly provided for in the Acquisition Agreement, are required by the Debtors to consummate the transactions contemplated therein.

6. Approval at this time of the Acquisition Agreement and the consummation of the transactions contemplated thereby (subject to confirmation of a chapter 11 plan) is in the best interests of Debtors, their creditors, and their estates.

7. The terms and the conditions of the Acquisition Agreement are fair and reasonable.

8. The Debtors have articulated good and sufficient reasons for authorizing entry into the Acquisition Agreement and approving the Break-Up Payment under the terms and conditions of the Acquisition Agreement. The Break-Up Payment is (i) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of Bankruptcy Code section 503(b), (ii) of substantial benefit to the Debtors, their estates, their creditors, and other parties-in-interest, (iii) reasonable and appropriate considering, among other things, the size and nature of the proposed acquisition and the efforts that have been and will be expended by Cellco Partnership d/b/a Verizon Wireless ("VerizonWireless") and VZW Corp. in seeking to consummate the transactions contemplated by the Acquisition Agreement, and (iv) necessary to ensure that VerizonWireless and VZW Corp. will continue to pursue the transactions contemplated by the Acquisition Agreement.

9. The Break-Up Payment is an integral part of the transactions contemplated by the Acquisition Agreement, and, in the absence of the Debtors' obligations to make, and agreement to request administrative claim status for, such payment as specified in the Acquisition Agreement, VerizonWireless and VZW Corp. would not have entered into the Acquisition Agreement. Accordingly, VerizonWireless and VZW Corp. are unwilling to hold open their offer to pursue the proposed acquisition involving the Debtors and consummate the other transactions contemplated by the Acquisition Agreement unless they are assured of the Debtors' ability, right, and obligation to pay the Break-Up Payment.

10. The Acquisition Agreement has been pursued by the Debtors in contemplation of their expected reorganization, and will facilitate the Debtors' attempts to reorganize under Chapter 11 of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. Any objections to the entry of this order or the relief granted herein and requested in the Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are denied and overruled on the merits with prejudice.
3. The Debtors are authorized to enter into the Acquisition Agreement and perform their obligations thereunder.
4. The Debtors are authorized to pay the Break-Up Payment in accordance with the terms of the Acquisition Agreement.
5. The Break-Up Payment (a) constitutes an administrative expense of the Debtors' estates under Bankruptcy Code section 503(b) and 507(a)(1), with priority in any subsequent or superseding bankruptcy case (including any chapter 7 case), shall (b) be paid by the Debtors in the time and manner provided in the Acquisition Agreement without any further order of this Court, and (c) not be discharged, modified or otherwise affected by any plan of reorganization of any of the Debtors, any conversion of the case to Chapter 7, or any dismissal of the case.
6. Upon the closing under the Acquisition Agreement, the License Sale Cash Payment shall be paid to the FCC in accordance with the terms of the Global Resolution

Agreement approved by this Court by order dated May 25, 2004 (the "GRA"), and any applicable Sharing Payment shall be paid to the FCC in accordance with the terms of the GRA, with such payments to be free and clear of any liens, claims, encumbrances, rights or interests of the Debtors and other parties in interest.

7. The failure specifically to include any particular provisions of the Acquisition Agreement in this order shall not diminish or impair the effectiveness of such provisions. Likewise, all of the provisions of this order are nonseverable and mutually dependent.

8. The terms and provisions of this order shall be binding in all respects upon the Debtors, their estates, their respective affiliates, successors, and assigns, and any trustee, responsible person, estate administrator, representative, or similar person subsequently appointed for or in connection with any of Debtors' estates or affairs in these chapter 11 cases or in any subsequent case(s) under the Bankruptcy Code involving any of the Debtors.

9. Nothing contained in the reorganization plan confirmed for the Debtors in these cases or in any other order in these cases (including any order entered after any conversion of these cases to cases under Chapter 7 of the Bankruptcy Code) shall alter, conflict with or derogate from the provisions of the Acquisition Agreement, and the terms of this order, and, in the event of any inconsistency between such plan and this order, the terms of this order shall govern.

10. Nothing herein shall prescribe or constrain the FCC's exercise of its regulatory authority.

11. This order shall be effective immediately, and not stayed pursuant to Bankruptcy Rule 5004(g) or any other applicable Bankruptcy Rule.

Dated: White Plains, New York  
November 30, 2004

/s/ Adlai S. Hardin, Jr.  
HONORABLE ADLAI S. HARDIN, Jr.  
UNITED STATES BANKRUPTCY JUDGE

<b>FCC 603</b>	<b>FCC Wireless Telecommunications Bureau</b> <b>Application for Assignments of Authorization</b> <b>and Transfers of Control</b>	Approved by OMB 3060 - 0800 See instructions for public burden estimate Submitted 12/02/2004 at 05:01PM  File Number: <b>0001938332</b>
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1) Application Purpose: <b>Amendment</b>	
2a) If this request is for an Amendment or Withdrawal, enter the File Number of the pending application currently on file with the FCC.	File Number: <b>0001938332</b>
2b) File numbers of related pending applications currently on file with the FCC:	

**Type of Transaction**

3a) Is this a <i>pro forma</i> assignment of authorization or transfer of control? <b>No</b>
3b) If the answer to Item 3a is 'Yes', is this a notification of a <i>pro forma</i> transaction being filed under the Commission's forbearance procedures for telecommunications licenses?
4) For assignment of authorization only, is this a partition and/or disaggregation?
5a) Does this filing request a waiver of the Commission rules? If 'Yes', attach an exhibit providing the rule numbers and explaining circumstances. <b>No</b>
5b) If a feeable waiver request is attached, multiply the number of stations (call signs) times the number of rule sections and enter the result.
6) Are attachments being filed with this application? <b>Yes</b>
7a) Does the transaction that is the subject of this application also involve transfer or assignment of other wireless licenses held by the assignor/transferor or affiliates of the assignor/transferor(e.g., parents, subsidiaries, or commonly controlled entities) that are not included on this form and for which Commission approval is required? <b>Yes</b>
7b) Does the transaction that is the subject of this application also involve transfer or assignment of non-wireless licenses that are not included on this form and for which Commission approval is required? <b>No</b>

**Transaction Information**

8) How will assignment of authorization or transfer of control be accomplished? <b>Sale or other assignment or transfer of stock</b> If required by applicable rule, attach as an exhibit a statement on how control is to be assigned or transferred, along with copies of any pertinent contracts, agreements, instruments, certified copies of Court Orders, etc.
9) The assignment of authorization or transfer of control of license is: <b>Voluntary</b>

**Licensee/Assignor Information**

10) FCC Registration Number (FRN): <b>0002964922</b>			
11) First Name (if individual):	MI:	Last Name:	Suffix:
12) Entity Name (if not an individual): <b>NextWave Personal Communications Inc., Debtor-in-Possession</b>			
13) Attention To: <b>Michael R. Wack</b>			
14) P.O. Box:	And / Or	15) Street Address: <b>601 13th Street, NW, Suite 320</b>	
16) City: <b>Washington</b>		17) State: <b>DC</b>	18) Zip Code: <b>20005</b>
19) Telephone Number: <b>(202)661-2083</b>		20) FAX Number: <b>(202)347-2822</b>	

21) E-Mail Address: **mwack@nextwavetel.com**

## 22) Race, Ethnicity, Gender of Assignor/Licensee (Optional)

<b>Race:</b>	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
<b>Ethnicity:</b>	Hispanic or Latino:	Not Hispanic or Latino:			
<b>Gender:</b>	Female:	Male:			

## Transferor Information (for transfers of control only)

23) FCC Registration Number (FRN): <b>0005798061</b>			
24) First Name (if individual):	MI:	Last Name:	Suffix:
25) Entity Name (if not an individual): <b>NextWave Telecom Inc.</b>			
26) P.O. Box:	And / Or	27) Street Address: <b>601 13th Street, NW, Suite 320</b>	
28) City: <b>Washington</b>	29) State: <b>DC</b>	30) Zip Code: <b>20005</b>	
31) Telephone Number: <b>(202)661-2083</b>	32) FAX Number: <b>(202)347-2822</b>		
33) E-Mail Address: <b>mwack@nextwavetel.com</b>			

## Name of Transferor Contact Representative (if other than Transferor) (for transfers of control only)

34) First Name: <b>Thomas</b>	MI:	Last Name: <b>Gutierrez</b>	Suffix:
35) Company Name: <b>Lukas, Nace, Gutierrez &amp; Sachs, Chartered</b>			
36) P.O. Box:	And / Or	37) Street Address: <b>1650 Tysons Boulevard, Suite 1500</b>	
38) City: <b>McLean</b>	39) State: <b>VA</b>	40) Zip Code: <b>22102</b>	
41) Telephone Number: <b>(703)584-8673</b>	42) FAX Number: <b>(703)584-8696</b>		
43) E-Mail Address: <b>tom.gutierrez@fccclaw.com</b>			

## Assignee/Transferee Information

44) The Assignee is a(n): <b>Partnership</b>			
45) FCC Registration Number (FRN): <b>0003290673</b>			
46) First Name (if individual):	MI:	Last Name:	Suffix:
47) Entity Name (if other than individual): <b>Cellco Partnership</b>			
48) Name of Real Party in Interest:			49) TIN:
50) Attention To: <b>Pamela Y. Hoof</b>			
51) P.O. Box:	And / Or	52) Street Address: <b>One Verizon Place (MC: GA3B1REG)</b>	
53) City: <b>Alpharetta</b>	54) State: <b>GA</b>	55) Zip Code: <b>30004-8511</b>	
56) Telephone Number: <b>(678)339-4271</b>	57) FAX Number: <b>(678)339-8552</b>		
58) E-Mail Address: <b>pamela.hoof@verizonwireless.com</b>			

## Name of Assignee/Transferee Contact Representative (if other than Assignee/Transferee)

59) First Name: <b>Sarah</b>	MI: <b>E</b>	Last Name: <b>Welsman</b>	Suffix:
60) Company Name: <b>Verizon Wireless</b>			
61) P.O. Box:	And / Or	62) Street Address: <b>1300 I Street, NW - Suite 400 West</b>	

63) City: <b>Washington</b>	64) State: <b>DC</b>	65) Zip Code: <b>20005</b>
66) Telephone Number: <b>(202)589-3764</b>	67) FAX Number: <b>(202)589-3750</b>	
68) E-Mail Address: <b>sarah.welsman@verizonwireless.com</b>		

**Alien Ownership Questions**

69) Is the Assignee or Transferee a foreign government or the representative of any foreign government?	<b>No</b>
70) Is the Assignee or Transferee an alien or the representative of an alien?	<b>No</b>
71) Is the Assignee or Transferee a corporation organized under the laws of any foreign government?	<b>No</b>
72) Is the Assignee or Transferee a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	<b>No</b>
73) Is the Assignee or Transferee directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? If 'Yes', attach exhibit explaining nature and extent of alien or foreign ownership or control.	<b>Yes</b>

**Basic Qualification Questions**

74) Has the Assignee or Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? If 'Yes', attach exhibit explaining circumstances.	<b>No</b>
75) Has the Assignee or Transferee or any party to this application, or any party directly or indirectly controlling the Assignee or Transferee, or any party to this application ever been convicted of a felony by any state or federal court? If 'Yes', attach exhibit explaining circumstances.	<b>No</b>
76) Has any court finally adjudged the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? If 'Yes', attach exhibit explaining circumstances.	<b>No</b>
77) Is the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee currently a party in any pending matter referred to in the preceding two items? If 'Yes', attach exhibit explaining circumstances.	<b>Yes</b>

**78) Race, Ethnicity, Gender of Assignee/Transferee (Optional)**

<b>Race:</b>	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
<b>Ethnicity:</b>	Hispanic or Latino:	Not Hispanic or Latino:			
<b>Gender:</b>	Female:	Male:			

**Fee Status**

79) Is the applicant exempt from FCC application fees? <b>No</b>
80) Is the applicant exempt from FCC regulatory fees? <b>Yes</b>

**Assignor/Transferor Certification Statements**

1) The Assignor or Transferor certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for <i>pro forma</i> assignments and transfers by telecommunications carriers. See <i>Memorandum Opinion and Order</i> , 13 FCC Rcd. 6293(1998).
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2) The Assignor or Transferor certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

Typed or Printed Name of Party Authorized to Sign

81) First Name: **Michael** MI: **R** Last Name: **Wack** Suffix:

82) Title: **Senior VP & Deputy General Counsel**

Signature: **Michael R Wack**

83) Date: **12/02/04**

### Assignee/Transferee Certification Statements

1) The Assignee or Transferee certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for *pro forma* assignments and transfers by telecommunications carriers See *Memorandum Opinion and Order*, 13 FCC Rcd. 6293 (1998).

2) The Assignee or Transferee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.

3) The Assignee or Transferee certifies that grant of this application would not cause the Assignee or Transferee to be in violation of any pertinent cross-ownership, attribution, or spectrum cap rule.\*

\*If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.

4) The Assignee or Transferee agrees to assume all obligations and abide by all conditions imposed on the Assignor or Transferor under the subject authorization(s), unless the Federal Communications Commission pursuant to a request made herein otherwise allows, except for liability for any act done by, or any right accrued by, or any suit or proceeding had or commenced against the Assignor or Transferor prior to this assignment.

5) The Assignee or Transferee certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

6) The Assignee or Transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.

7) The applicant certifies that it either (1) has an updated Form 602 on file with the Commission, (2) is filing an updated Form 602 simultaneously with this application, or (3) is not required to file Form 602 under the Commission's rules.

### Typed or Printed Name of Party Authorized to Sign

84) First Name: **John** MI: **T** Last Name: **Scott** Suffix: **III**

85) Title: **VP Deputy General Counsel Regulatory Law**

Signature: **John T Scott III**

86) Date: **12/02/04**

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).**

### Authorizations To Be Assigned or Transferred

87) Call Sign	88) Radio Service	89) Location Number	90) Path Number (Microwave only)	91) Frequency Number	92) Lower or Center Frequency (MHz)	93) Upper Frequency (MHz)	94) Constructed Yes / No	95) Assignment Indicator
<b>KNLF644</b>	<b>CW</b>						<b>Yes</b>	
<b>KNLF645</b>	<b>CW</b>						<b>Yes</b>	

KNLF646	CW	Yes
KNLF647	CW	Yes
KNLF652	CW	Yes
KNLF802	CW	Yes
KNLF812	CW	Yes

<b>FCC Form 603 Schedule A</b>	<b>Schedule for Assignments of Authorization and Transfers of Control in Auctioned Services</b>	Approved by OMB 3060 - 0800 See instructions for public burden estimate
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### Assignments of Authorization

#### 1) Assignee Eligibility for Installment Payments (for assignments of authorization only)

Is the Assignee claiming the same category or a smaller category of eligibility for installment payments as the Assignor (as determined by the applicable rules governing the licenses issued to the Assignor)?

If 'Yes', is the Assignee applying for installment payments?

#### 2) Gross Revenues and Total Assets Information (if required) (for assignments of authorization only)

Refer to applicable auction rules for method to determine required gross revenues and total assets information

Year 1 Gross Revenues (current)	Year 2 Gross Revenues	Year 3 Gross Revenues	Total Assets:
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#### 3) Certification Statements

##### For Assignees Claiming Eligibility as an Entrepreneur Under the General Rule

Assignee certifies that they are eligible to obtain the licenses for which they apply.

##### For Assignees Claiming Eligibility as a Publicly Traded Corporation

Assignee certifies that they are eligible to obtain the licenses for which they apply and that they comply with the definition of a Publicly Traded Corporation, as set out in the applicable FCC rules.

##### For Assignees Claiming Eligibility Using a Control Group Structure

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

##### For Assignees Claiming Eligibility as a Very Small Business, Very Small Business Consortium, Small Business, or as a Small Business Consortium

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

##### For Assignees Claiming Eligibility as a Rural Telephone Company

Assignee certifies that they meet the definition of a Rural Telephone Company as set out in the applicable FCC rules, and must disclose all parties to agreement(s) to partition licenses won in this auction. See applicable FCC rules.

### Transfers of Control

**4) Licensee Eligibility (for transfers of control only)**

As a result of transfer of control, must the licensee now claim a larger or higher category of eligibility than was originally declared?

If 'Yes', the new category of eligibility of the licensee is:

**Certification Statement for Transferees**

Transferee certifies that the answers provided in Item 4 are true and correct.

The copy resulting from Print Preview is intended to be used as a reference copy only and MAY NOT be submitted to the FCC as an application for manual filing.

**Attachment List**

Attachment Type	Date	Description	Contents
Other	11/15/04	Exhibit 6 - Competition chart	<a href="#">0179755646869513367296935.pdf</a>
Other	11/15/04	Exhibit 5 - Spectrum overlaps	<a href="#">0179755656869513367296935.pdf</a>
Other	11/15/04	Exhibit 4 - Pending litigation	<a href="#">0179755696869513367296935.pdf</a>
Ownership	11/15/04	Exhibit 3 - Foreign ownership	<a href="#">0179755706869513367296935.pdf</a>
Other	11/15/04	Exhibit 2 - licenses	<a href="#">0179755726869513367296935.pdf</a>
Other	11/15/04	Exhibit 1 - Description of Transaction	<a href="#">0179755756869513367296935.pdf</a>
Other	11/16/04	Resubmitted Exhibit 6 - Competition chart	<a href="#">0179760626869513367296935.pdf</a>
Other	12/02/04	Bankruptcy Court Order	<a href="#">0179794766869513367296935.pdf</a>
Other	12/02/04	Amended Exhibit 1	<a href="#">0179795516869513367296935.pdf</a>

**DESCRIPTION OF TRANSACTION  
AND PUBLIC INTEREST STATEMENT**

**I. INTRODUCTION**

NextWave Telecom Inc. ("NextWave Telecom") and Cellco Partnership d/b/a Verizon Wireless ("Cellco"), in two simultaneously filed applications, seek the Commission's consent to transfer control of two licensees, NextWave Personal Communications Inc., debtor-in-possession ("NPCI"), and NextWave Power Partners Inc., debtor-in-possession ("NPPI"), from NextWave Telecom to Cellco.<sup>1</sup>

This transfer of control involves 23 broadband PCS licenses, 19 of which authorize the use of 10 MHz of spectrum and four for 20 MHz, covering the Basic Trading Areas ("BTAs") listed in Exhibit 2 (the "Licenses"). The transfer of control will occur pursuant to an Agreement by and among NextWave Telecom and Verizon Wireless dated as of November 4, 2004 (the "Agreement"). Because NextWave is undergoing bankruptcy reorganization, the U.S. Bankruptcy Court for the Southern District of New York has reviewed and approved the Agreement.<sup>2</sup>

This transaction does not involve the transfer of control of any other FCC licenses or authorizations, including microwave stations or international Section 214 authorizations, and does not require any waivers. No filing fees are owed in connection with these applications. Moreover, no customers will be transitioned to a new carrier as a result of this transaction.

The transaction is consistent with the Global Resolution Agreement ("GRA"), dated as of April 20, 2004, between NextWave and the Commission.<sup>3</sup> Through the GRA, the Commission has settled all of its financial claims relating to the installment payment obligations incurred by NextWave in connection with the acquisition of its licenses (including the 23 licenses covered by

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<sup>1</sup> NextWave Telecom, NPCI and NPPI are referred to jointly in this exhibit as "NextWave." Cellco will hold its interest in the licensees through a wholly-owned subsidiary, VZW Corp. Cellco and VZW Corp are referred to jointly in this exhibit as "Verizon Wireless."

<sup>2</sup> See Order Granting Motion Pursuant to Sections 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2002 Approving Acquisition Agreement and Termination Payment, rel. December 1, 2004, Case No. 98 B 21529 (B. Ct. S.D.N.Y.). The bankruptcy court's order is included as an exhibit to this application.

<sup>3</sup> See Order Granting Motion Pursuant to Section 363 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 6004 and 9019 Approving Settlement and Releases, rel. May 25, 2004, Case No. 98 B 21529 (B. Ct. S.D.N.Y.), at Exhibit 1.

these applications). The Agreement, in accordance with Section 3 of the GRA, contemplates that Verizon Wireless will deliver to the FCC a portion of the purchase price agreed to by the FCC ("Section 3 Payment") in satisfaction of NextWave's settlement obligations to the FCC under the GRA. Accordingly, the Applicants request that as part of the FCC approval, the FCC state that under the FCC's rules, and as memorialized in the GRA, there are no unjust enrichment obligations associated with the Licenses.

The transaction will serve the public interest and fulfill the goals of the Telecommunications Act of 1996. Due to a complex set of circumstances, spectrum licensed to NextWave has not been used to deliver widespread commercial wireless communications to the public. The proposed transaction will enable that spectrum to be put to prompt commercial use to benefit wireless consumers – an outcome that unquestionably is in the public interest. It will give Verizon Wireless the spectrum it needs to expand its footprint, to compete for additional wireless voice customers, and to deploy new wireless broadband data services. The transaction creates no realistic risk of any countervailing competitive harm. It will raise Verizon Wireless's spectrum holdings to 35 MHz or less in five of the BTAs, to 45 MHz in fourteen of the BTAs, to 55 MHz or less in two BTAs, and to 65 MHz in two BTAs.

## II. DESCRIPTION OF THE PARTIES

### A. NextWave

NextWave was formed in 1995 to provide PCS services, including broadband wireless services, and holds various PCS licenses obtained through FCC auctions. An FCC Form 602 providing ownership information concerning NextWave and its subsidiaries is on file with the Commission. NextWave's qualifications to be a licensee are not in doubt, and there is no question that NextWave possesses the qualifications necessary to hold the licenses.<sup>4</sup> NextWave's certifications to the FCC that it satisfied the FCC's 5-year "build out" rule relating to the licenses were accepted by the FCC on April 21, 2003. No financial obligations to the government attach to the Licenses, other than those set forth in the GRA, which will be satisfied pursuant to the Agreement.

### B. Verizon Wireless

Cellco is a general partnership that is jointly owned by Verizon Communications Inc. and Vodafone Group Plc ("Vodafone"). Cellco's qualifications to hold cellular and PCS licenses are

<sup>4</sup> See *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, WT Docket No. 03-217, *Memorandum Opinion and Order*, FCC 04-26 (rel. February 12, 2004) ("*NextWave-Cingular Order*"), at ¶ 25.

a matter of public record, established and approved in various Commission decisions.<sup>5</sup> **Exhibit 3** provides detailed information regarding ownership of Cellco; this information also is contained in Cellco's Form 602, which is on file with the Commission.

The Commission has previously approved Vodafone's 45%, indirect, non-controlling interest in Cellco, as well as Vodafone's qualifications (as a foreign corporation) to hold indirect ownership interests in common carrier licensees, pursuant to section 310(b)(4) of the Communications Act.<sup>6</sup> Vodafone continues to hold this 45% indirect interest. Neither Vodafone nor any of its foreign subsidiaries holds any direct ownership interests in any common-carrier licenses. Thus, no new foreign-ownership issues are raised by this filing, and the Commission can and should extend the previous section 310(b)(4) authorization to the Licenses included in this application.

**Exhibit 4** provides information responsive to questions on Form 603 that seek information as to pending litigation involving the transferee. The responses to those questions, together with Exhibits 3 and 4, demonstrate that Verizon Wireless is fully qualified to acquire control of the Licenses that are the subject of this application.

### III. DESCRIPTION OF THE TRANSACTION

The transaction involves the transfer of control of 23 PCS licenses that NextWave obtained through competitive bidding. All but four of the Licenses are for 10 MHz of spectrum in the C, D, E and F blocks; the remaining four licenses are for 20 MHz. See Exhibit 2.

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<sup>5</sup> See, e.g., *Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless*, WT Docket No. 03-19, *Memorandum Opinion and Order*, 18 FCC Rcd 6490 (Comm'l Wireless Div. 2003) ("*Northcoast Order*"); Public Notice, "*Wireless Telecommunications Bureau and International Bureau Grant Consent for Assignment or Transfer of Control of Wireless Licenses and Authorizations from Price Communications Corporation to Cellco Partnership d/b/a Verizon Wireless*," DA 01-791 (rel. Mar. 30, 2001) ("*Price/Verizon Wireless Order*").

<sup>6</sup> See *Northcoast Order* at ¶ 6 n.15 (finding that Vodafone's interest "ha[d] been previously approved by the Commission under section 310(b)(4)" and because "no changes have occurred in Verizon Wireless' foreign ownership since . . . these rulings[,] the applications raise no new foreign ownership issues"); *Applications of Vodafone AirTouch Plc and Bell Atlantic Corp.*, *Memorandum Opinion and Order*, 15 FCC Rcd 16507 at ¶ 19 (IB and WTB 2000) ("*Vodafone/Bell Atlantic Order*"); FCC Public Notice, "International Authorizations Granted," Report No. TEL-00174, DA No. 99-3033 (IB and WTB, rel. Dec. 30, 1999); *Applications of AirTouch Communications, Inc. and Vodafone Group, Plc.*, 14 FCC Rcd 9430 at ¶ 9 (WTB 1999).

The transaction is part of a plan of reorganization that NextWave will submit to the bankruptcy court. Under the transaction and that plan, VZW Corp., a wholly-owned subsidiary of Cellco, will acquire all of the shares of NextWave Telecom, which directly owns all of the capital stock of NPCI and indirectly owns all of the capital stock of NPPI. NPCI and NPPI are the two NextWave entities that hold the PCS licenses. The transaction will thereby transfer control of these licensees to Cellco. At closing, these entities will have no assets other than the licenses, and no liabilities. Pursuant to an internal corporate restructuring, all of NextWave's liabilities and remaining assets will be consolidated into a newly formed operating company through which NextWave intends to develop, build and operate broadband wireless networks.

#### IV. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST.

This transaction will serve the public interest in four principal ways. First, it will give Verizon Wireless the spectrum capacity it needs to provide its industry-leading voice service to new and existing subscribers. Second, the additional spectrum will enable Verizon Wireless to deploy its first-of-kind wireless broadband data service (known as EV-DO) more rapidly and more broadly. Third, the transaction will enable Verizon Wireless to operate more efficiently. Fourth, the transaction will increase the spectrum used to provide wireless services to consumers and will facilitate the successful resolution of bankruptcy proceedings involving NextWave. The transaction accordingly advances two core goals of the Telecommunications Act of 1996 – promoting competition in all segments of the communications marketplace, and promoting the rapid deployment of advanced telecommunications capability.

##### A. Expanded Wireless Voice Services

The transaction will permit Verizon Wireless to enter and compete as a new facilities-based carrier in one top-100 wireless market, Tulsa, OK, where it currently holds no spectrum.<sup>7</sup> The transaction will also alleviate the spectrum constraints that Verizon Wireless will soon experience in some markets, and will allow the company to meet the growing demand for its services in other markets.<sup>8</sup> In most of the BTAs involved in this new transaction, Verizon

<sup>7</sup> Exhibit 5 identifies the amount of spectrum VZW currently holds in the 23 markets covered by this transaction. In addition to the Tulsa, OK BTA, VZW will acquire spectrum for the first time in one county in the Detroit BTA. In three markets – Denver, CO, Portland, OR and Provo, UT – Verizon Wireless currently has either 25 MHz or less, but has pending before the Commission an application to acquire 10 MHz of spectrum from Qwest Wireless. *Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the Assignment of Sixty-Two Broadband Personal Communications Services Licenses*, WT Docket No. 04-2654, DA 04-2254, Public Notice (July 22, 2004). Acquiring the 10 MHz Qwest and NextWave licenses will give Verizon Wireless 45 MHz or less in these three markets.

<sup>8</sup> According to Lehman Brothers, Verizon Wireless currently has less spectrum relative to the traffic on its network than any of the other national wireless providers. See B. Bath, Lehman

Wireless holds or will hold following consummation of the Qwest transaction 35 MHz or less. The transaction will give Verizon Wireless additional spectrum in these markets, which will enhance its ability to accommodate new subscribers and to provide new services. This in turn will enable Verizon Wireless to continue competing vigorously – competition that will directly translate into benefits to consumers. The transaction accordingly furthers the same goals the Commission upheld when it allocated PCS spectrum in 10 MHz blocks with the expectation that existing cellular carriers would obtain that spectrum to expand their spectrum capacity to 35 MHz in order to enhance their systems and compete in the market.<sup>9</sup>

#### **B. New Wireless Broadband Services**

Verizon Wireless also needs additional spectrum in which to deploy new wireless broadband services for which there is rapidly growing demand. Verizon Wireless is the first U.S. carrier to have launched what will become a nationwide high-speed wireless data network, and its entry has already prompted competitive responses from other carriers.<sup>10</sup> Offering speeds comparable to cable modem and DSL (average data rates of 300-500 kbps with peak data rates up to 2.4 Mbps), Verizon Wireless's EV-DO technology is the most sophisticated wireless broadband technology currently available.<sup>11</sup> Verizon Wireless launched EV-DO service in San Diego and Washington, DC in October 2003,<sup>12</sup> and is currently expanding EV-DO service to include Las Vegas, New York, Philadelphia, Miami-Fort Lauderdale, Atlanta, Austin, Kansas

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Brothers, *Wireless Services Industry Update: Spectrum Availability, Industry Implics.* at Figure 4 (June 17, 2004).

<sup>9</sup> See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700, ¶¶ 97-111 (1993).

<sup>10</sup> See, e.g., Nextel Press Release, *Nextel Expands Successful Broadband Trial to Include Paying Customers and Larger Coverage Area* (Apr. 14, 2004) (Nextel has begun accepting paying customers for its Wireless Broadband service in the Raleigh-Durham/Chapel Hill area; the service offers downlink speeds of up to 1.5 Mbps with burst rates of up to 3.0 Mbps; typical uplink speeds are up to 375 kbps with burst rates of up to 750 kbps); Sprint Press Release, *Sprint Announces Plans to Extend Its Wireless Data Leadership with Launch of High-Speed Wireless Data Technology* (June 22, 2004) (Sprint will deploy EV-DO in select markets in second half of 2004, and launch in the majority of top metropolitan markets in 2005).

<sup>11</sup> B. Richards, *et al.*, CIBC World Markets, Investext Rpt. No. 7305232, Sierra Wireless Inc. – Company Report at \*2 (Mar. 6, 2003) (EV-DO networks are “comparable to those of DSL and cable modems”).

<sup>12</sup> Verizon Wireless Press Release, *Wireless Broadband Data Service Introduced in Major Metro Areas* (Sept. 29, 2003).

City, Baltimore, Tampa, West Palm Beach, Milwaukee, and 24 airports from coast to coast. It has committed to invest \$1 billion over the next two years to rollout the service nationwide.<sup>13</sup>

Wireless broadband networks will make possible the provision of new and innovative services to end users, not only to mobile phones and laptop computers but also to car dashboards – services as diverse as maps, directions, music, full-featured mobile video phones; multimedia mobile messaging; and mobile emergency and safety applications such as remote patient monitoring and mobile robotics.

The deployment of wireless broadband will grow the competitive wireless industry as a whole. On wireline networks, data now accounts for more than a third of local revenues, up from only 9 percent as of 1996.<sup>14</sup> Analysts expect comparable growth in wireless data over the next several years.<sup>15</sup> In 2003, laptop sales surpassed desktop sales for the first time, and this trend is expected to continue.<sup>16</sup> Laptops already represent 25 percent of all PCs, and this is expected to grow to 35 percent within the next five years.<sup>17</sup> Analysts expect that 75 percent of Personal Digital Assistants will be able to access the Internet by 2007.<sup>18</sup> As with any expansion of industry output, these developments can be expected to bring about gains in jobs and productivity.

EV-DO, however, requires considerable spectrum capacity. A data session can require peak data rates that are 10-100 times greater than the peak data rates required to support a voice call. Put another way, data sessions will significantly increase the capacity demand on Verizon Wireless' network and spectrum resources. To be prepared to meet the network capacity needed in the future for burgeoning data demand, as well as the continued increase in voice traffic,

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<sup>13</sup> See Verizon News Release, *Verizon Wireless Makes Strides with Planned BroadbandAccess 3G Network Expansion* (Mar. 22, 2004) (Verizon is "on target" to expand its EV-DO offering to cover one-third of its network (approximately 75 million Americans) by the end of 2004. Verizon has committed to invest \$1 billion over the next two years to rollout the service nationwide.); Verizon Wireless Press Release, *Verizon Wireless and Lucent Technologies Launch EV-DO Data Services in Additional US Markets* (Sept. 23, 2004).

<sup>14</sup> Compare T.A. Jacobs, et al., JP Morgan H&Q, *Telecom Services 2001* at Table 1 (Nov. 2, 2001) with J. Bazinet, et al., JP Morgan, *The Art of War* at Table 2 (Nov. 7, 2003) (2003 est.).

<sup>15</sup> See J. Bazinet, et al., JP Morgan, *The Art of War* at Table 2 (Nov. 7, 2003).

<sup>16</sup> See NPD Group Press Release, *Historic Firsts: Notebooks Outsell Desktops and LCD Monitors Unit Sales Surpass CRT Monitors According to The NPD Group* (July 1, 2003).

<sup>17</sup> See Merrill Lynch Capital Markets, Investext Rpt. No. 7693240, *PC Handbook – Worldwide PC Forecast – Industry Report* at Table 4 (Nov. 5, 2003); Bear, Stearns & Co., Inv., Investext Rpt. No. 7654809, *PC Industry Forecast: Raising 2003 PC Unit Growth from 9% to 1 – Industry Report* (Oct. 20, 2003).

<sup>18</sup> See B. Cole, *Net-centric Appliances Provide a New Platform Paradigm*, EE Times (Mar. 28, 2003) (citing Instat/MDR Internet access devices market analyst Cindy Wolf).

Verizon Wireless needs to ensure it has sufficient spectrum to deploy. This transaction will provide Verizon Wireless with spectrum to meet the expected growth in demand for EV-DO as well as other services.

**C. Increased Efficiency**

The proposed transaction will also help Verizon Wireless operate more efficiently. In the past, the growth of national carriers such as Verizon Wireless has correlated with a consistent trend toward lower prices, greater coverage, and expanded service offerings for wireless consumers.<sup>19</sup>

In markets that Verizon Wireless already serves, the new spectrum will help it avoid the inefficiencies associated with cell splitting, an engineering strategy that is growing increasingly difficult, time-consuming, and expensive, in part because of the need to obtain new sites and the zoning and other approvals for those sites. The new licenses will enable Verizon Wireless to add spectrum capacity to its existing network, which is much more efficient than cell-splitting. The Commission has repeatedly recognized that capturing such economics through spectrum acquisitions is in the public interest because they lower prices, improve service quality, expand coverage and roaming capabilities, lower roaming rates, and accelerate deployment of state-of-the-art services. The Commission has also recognized the pro-competitive efficiencies that can be realized when carriers spread the cost of deploying network infrastructure, customer service and other operations over a larger customer base.<sup>20</sup>

**D. Putting Spectrum to Use and Terminating NextWave's Bankruptcy**

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<sup>19</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service ("Ninth CMRS Competition Report")*, FCC 04-216 (rel. Sept. 28, 2004), ¶¶ 222-223: "By a number of performance indicators, U.S. consumers continue to benefit greatly from robust competition in the CMRS marketplace. During 2003, the CMRS industry experienced another year of growth, demonstrating the continuing demand for and reliance upon mobile services. . . . [A] wide variety of indicators of carrier conduct and market structure also show that competition in mobile telecommunication markets is robust."

<sup>20</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 17 FCC Rcd 12985, 12997 (2002) ("*Seventh CMRS Competition Report*") ("The Commission has concluded previously that operators with larger footprints can achieve certain economies of scale and increased efficiencies compared to operators with smaller footprints. Such benefits, along with advances such as digital technology, have permitted companies to introduce and expand innovative pricing plans such as digital-one-rate type plans, reducing prices to consumers.").

Finally, the proposed transaction will advance the public interest by increasing the spectrum that will be used to provide wireless services to consumers. As the Commission is aware, for a complex set of reasons, the spectrum licensed to NextWave has not been used to deliver widespread commercial wireless communications to the public. By placing that spectrum in the hands of Verizon Wireless, an experienced provider, the Commission will ensure that the spectrum will be put to use.<sup>21</sup> Moreover, the acquisition of the licenses by Verizon Wireless is the cornerstone of NextWave's successful reorganization, which will enable NextWave to pay all creditors in full and emerge with a viable wireless business. Approval thus advances the public interest long recognized by the Commission in facilitating the successful resolution of bankruptcy proceedings involving its licensees.<sup>22</sup>

#### V. THE TRANSACTION WILL NOT ADVERSELY AFFECT COMPETITION.

The proposed transaction will produce the significant public interest benefits described above. In addition, this transaction will have no countervailing adverse effect on competition.

The transaction will bring a new wireless competitor to a top-100 market – Tulsa, Oklahoma. For the first time Verizon Wireless will be able to compete head to head in that market, bringing new products and services to benefit Tulsa consumers. Its entry into that market will intensify competition and thereby serve the public interest.

In all other markets, where it will acquire additional spectrum, Verizon Wireless will continue to face vigorous competition from numerous competitors. Because the spectrum licensed to NextWave has not been used to deliver widespread commercial wireless services, the transaction will not result in the elimination of an active competitor in any market, substantially eliminating any potential for competitive harm.<sup>23</sup>

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<sup>21</sup> See *NextWave-Cingular Order* ¶ 32 (noting public interest benefit resulting from “spectrum that has been sitting idle for more than five years as a result of litigation . . . be[ing] put into use for the benefit of wireless consumers”).

<sup>22</sup> See, e.g., *Space Station System Licensee, Inc. and Iridium Constellation LLC*, 17 F.C.C.R. 2271, 2289 ¶ 44 (granting assignment applications when the grant “will serve the public interest by furthering the equitable purposes of the Federal Bankruptcy Act”); *In re Applications of Martin W. Hoffman, Trustee-In-Bankruptcy, For Astroline Communications Company Limited Partnership*, 15 F.C.C.R. 22,086 (2000) ¶ 14 (approving settlement agreement and renewing license when doing so would advance the public interest in “allowing for the termination of the . . . bankruptcy proceeding”) (citing *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974)).

<sup>23</sup> See *NextWave-Cingular Order* ¶ 31 (noting that Commission independently investigated the possible competitive harm resulting from the loss of “potential competition” from NextWave

Exhibit 6 lists those wireless carriers that, to the best of the applicants' knowledge, are currently offering commercial service in each BTA, as well as those carriers that hold licenses but do not appear to be offering commercial service at this time. The exhibit shows that each of the nationwide carriers other than Verizon Wireless – Sprint PCS, Cingular Wireless, Nextel, and T-Mobile – have established operations in most of the affected BTAs. Verizon Wireless will also face additional competition in some markets from large regional carriers such as U S Cellular and ALLTEL, as well as from smaller regional carriers such as Leap and Dobson.

Although Exhibit 6 lists only facilities-based carriers, the Commission has found that wireless resellers provide “additional constraints against anti-competitive behavior.”<sup>24</sup> For example, Virgin Mobile now serves more than 1.75 million customers through resale; Qwest Wireless is transitioning to a reseller with millions of customers of its own. AT&T has announced it will begin offering service as a wireless reseller, and even cable operators are expected to bundle wireless together with their video and Voice-over-IP offerings.<sup>25</sup>

Finally, the transaction will not involve any competitively significant increase in Verizon's spectrum holdings in any relevant market area. Exhibit 5 lists the 23 BTAs in which Verizon Wireless will obtain spectrum from NextWave. It shows that there is one BTA where there is no spectrum overlap. In the vast majority of the other BTAs, and in all the counties

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and concluded that “given the level of actual competition prevailing in those markets today, we do not believe any adverse impact on mobile telephony rates or service will result”).

<sup>24</sup> See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, *Memorandum Opinion & Order*, FCC 04-255 (released Oct. 26, 2004) (“AT&T-Cingular Order”), at ¶ 92; see also *2000 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order ¶ 42, WT Docket No. 01-14, FCC 01-328 (rel. Dec. 18, 2001) (“[C]arriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator (‘MVNO’) arrangement.”); *id.* fn.145 (The MVNO arrangement “is one in which ‘a network operator acts as a wholesaler of airtime to another firm, which then markets itself to users just like an independent operator with its own network infrastructure.’”); see also J. Moynihan, *et al.*, Merrill Lynch, *US Wireline 1Q04 Roundup* at 3 (May 7, 2004) (“[T]here may be five or more large scale companies reselling wireless service by 2005, along with the five facilities-based wireless providers (post the Cingular/ AT&T Wireless transaction.)”).

<sup>25</sup> See Virgin Mobile USA News Release, *Virgin Mobile USA Passes 1.75 Million Subscriber Mark* (Mar. 15, 2004); AT&T News Release, *AT&T To Offer Wireless Services to Consumers and Businesses Nationwide through Agreement with Sprint* (May 18, 2004); J. Moynihan, *et al.*, Merrill Lynch, *US Wireline 1Q04 Roundup* at 3 (May 7, 2004); Wall Street Journal, *Cable Titans Discuss Offering Cellular Services, Intensifying Foray into Telecom's Turf* (Nov. 8, 2004).

within those BTAs, the transaction will increase Verizon Wireless's spectrum holdings to 45 MHz or less. Of the remaining BTAs and counties within those BTAs, Verizon Wireless's spectrum would increase to 55 MHz or less in two BTAs, and to 65 MHz in two BTAs.

These post-transaction spectrum holdings are well within levels the Commission previously found not to raise the potential for competitive harm. In previous license transfer proceedings, the Commission approved similar spectrum acquisitions, finding that they did not "threaten[] competitive harm in the spectrum input market."<sup>26</sup> In all but two BTAs, Verizon Wireless' spectrum holdings after closing both this and the Qwest Wireless transaction will not exceed 55 MHz and thus will be consistent with – and in most cases less than – the Commission's previous spectrum caps, which were the levels that, in the Commission's judgment, did not raise any competitive concerns.<sup>27</sup>

Moreover, in all of the markets where it is acquiring licenses from NextWave, Verizon Wireless will hold less than 70 MHz – the threshold for review that the Commission established in the recent *AT&T-Cingular Order*. The Commission stated that, in line with the "conservative approach" it was taking for its competition analysis, using a 70 MHz threshold "would eliminate from further consideration any market in which there is no potential for competitive harm."<sup>28</sup> It determined that there was no need to subject to further review any market where the level of spectrum to be held would not exceed 70 MHz. It found that "a market may contain more than three viable competitors even where one entity controls this amount of spectrum, because many carriers are competing successfully with far lower amounts of bandwidth today."<sup>29</sup> It went on to authorize Cingular to hold as much as 80 MHz in certain markets based on its evaluation of the competitive conditions in those markets. In contrast, the largest amount of spectrum Verizon

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<sup>26</sup> *Northcoast Order*, *supra* n. 1 (approving Verizon Wireless's acquisition of spectrum in 50 BTAs that would result in Verizon Wireless holding 35 MHz or less in 44 BTAs and between 45 and 55 MHz in the remaining 6 BTAs); *see also ALLTEL/CenturyTel Order*, *supra* n. 25 (approving ALLTEL's acquisition of numerous 10 MHz PCS licenses that overlapped with its existing 25 MHz cellular licenses).

<sup>27</sup> *See, e.g., Price/Verizon Wireless Order* (approving spectrum aggregation of 55 MHz of combined cellular and PCS spectrum in Jacksonville MTA); *360/ALLTEL Order*, Public Notice, "Wireless Telecommunications Bureau Grants consent for The Transfer of Control of Licenses from CenturyTel, Inc. to ALLTEL Communications," DA 02-1366 (rel. June 12, 2002) ("*ALLTEL/CenturyTel Order*") (approving ALLTEL's acquisition of multiple cellular and PCS licenses, including eight BTAs where there was overlap between a 25 MHz cellular license and a 10 MHz PCS license); *Applications of Vanguard Cellular Systems, Inc. and Winston, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 3844 (WTB 1999) (authorizing acquisition of overlapping cellular and PCS spectrum holdings in various markets).

<sup>28</sup> *AT&T-Cingular Order* ¶ 109.

<sup>29</sup> *Id.*